

REMARKS

Claims 18-35 are pending in the instant application after entry of this amendment. A complete listing of the pending claims is presented above. Claims 7-17 have been canceled. Support for new claims 18-30 can be found throughout the specification, drawings and originally filed claims, e.g. Figures 1-3, and originally filed claims 1-6. Accordingly, no new matter is introduced by this amendment. The amendments to the specification and claims are presented in a revised format per the USPTO's announcement 'Amendments in a Revised Format Now Permitted', signed 31 January 2002, and accordingly do not conform to the current reading of 37 C.F.R. §1.121, which Applicants understand has been waived.

Specification

The disclosure stands objected to for failing to provide a description of each individual Figure. In light of the current amendment to the specification, presented above, withdrawal of this objection is respectfully requested.

Double Patenting Rejection

Claims 7-17 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of co-pending Application No. 09/428,155 in view of Seul et al., (U.S. Patent No. 6,387,707). As a timely filed terminal disclaimer, directed to Application No. 09/428,155 and in compliance with 37 CFR 1.1321(c), is filed along with this Response, Application 09/428,155 is not longer available to be used as the basis of an obviousness-type double patenting rejection.

When rejecting a claim under obviousness-type double patenting, the Examiner bears the same burden of establishing a *prima facie* case of obviousness under 35 U.S.C. §103. See *In re Braat*, 937 F.2d 589; M.P.E.P. §804(B)(1). Accordingly, to establish a *prima facie* case of obviousness-type double patenting the Examiner must show that the prior art reference, or references when combined, teach or suggest each and every limitation of the claimed invention. M.P.E.P. § 706.02(j). As the Examiner has stated that Seul et al. do not teach or suggest the colloidal particles of the instant invention. Accordingly, Seul et al., alone, cannot render the instant claims obvious and withdrawal of the obviousness-type double patenting rejection is respectfully requested.

CONCLUSION

Applicants respectfully submit that the claims are in condition for allowance and early notification to that effect is respectfully requested. Please direct any calls in connection with this application to the undersigned attorney at (415) 781-1989.

Respectfully submitted,

DORSEY & WHITNEY LLP

Dated: 7/10/03

By: 

Renee M. Kosslak, Reg. No. 47,717 for
Robin M. Silva, Reg. No. 38,304

Filed under 37 C.F.R. §1.34(a)

Four Embarcadero Center
Suite 3400
San Francisco, California 94111-4187
Telephone: (415) 781-1989
Fax No. (415) 398-3249

1112719